

PAUL S. COUPEY

IBLA 77-493

Decided December 20, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting in part certain mining claims and requiring additional documents. NM-MC 2313 to 2358.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Lands Subject to

Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the United States mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. Attempts to record such claims under 43 U.S.C.A. § 1744 (West Supp. 1977) are properly rejected.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Generally

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(7) before accepting the recordation of the claims under 43 U.S.C.A. § 1744 (West Supp. 1977).

APPEARANCES: Paul S. Coupey, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal arises under the mining claim recordation requirements set out in section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (West Supp. 1977), and regulations issued thereunder at 43 CFR Subpart 3833, 42 FR 5300 (January 27, 1977). Paul S. Coupey takes the appeal from the July 12, 1977, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting 15 mining claims in part for covering land not open to location and requiring additional documents for all 46 claims. 1/

The State Office, in its decision, listed in groups the partially rejected claims. Group A (see footnote 1) was located by Appellant in the NW 1/4, sec. 18, T. 13 N., R. 10 W., New Mexico principal meridian. The claims M Nos. 2, 4, 6, and 8 were rejected in part "insofar as they cover lands conveyed in Patent No. 1118314, in the SW1/4 Sec. 18, T. 13 N., R. 10 W., NMPM." Group B was located in the NE 1/4 and Group C was located in the SE 1/4 of section 4, T. 13 N., R. 11 W., New Mexico principal meridian. Claims M Nos. 15, 17, 19, 21, and 31 were rejected in part "insofar as they cover lands conveyed in Patent No. 824220, in the W1/2 Sec. 4, T. 13 N., R. 11 W., NMPM." Group D was located in the NW 1/4, sec. 6, T. 13 N., R. 11 W., New Mexico principal meridian. Claims M Nos. 33 and 35 were rejected in part "insofar as they cover lands conveyed in Patent No. 758925, in the SW1/4 Sec. 6, T. 13 N., R. 11 W., NMPM." Group E was located in the NW 1/4, sec. 20, T. 14 N., R. 11 W., New Mexico principal meridian. Claims M Nos. 72 and 74 were rejected in part "insofar as they cover lands in the NE1/4 Sec. 20, T. 14 N., R. 11 W., NMPM. In 1962, these lands came under the jurisdiction of the Navajo Trust, and thus are no longer open to location under the General Mining Laws." Group F was located in the NW 1/4, sec. 24, T. 14 N., R. 12 W., New Mexico principal meridian. Claims M Nos. 84 and 86 were rejected in part "insofar as they cover lands conveyed in Patent No. 49976, in the E1/2 Sec. 24, T. 14 N., R. 12 W., NMPM." In addition, the State Office informed Appellant that

1/ The mining claims are situated in groups as follows (the group notation is merely for the convenience of reference in this decision):

- Group A NM-MC 2313 to 2320 M Nos. 1 to 8
- Group B NM-MC 2321 to 2328 M Nos. 15 to 22
- Group C NM-MC 2329, 2330 M Nos. 31, 32
- Group D NM-MC 2331 to 2334 M Nos. 33 to 36
- Group E NM-MC 2335 to 2338 M Nos. 71 to 74
- Group F NM-MC 2339 to 2342 M Nos. 83 to 86
- Group G NM-MC 2343 M No. 89
- Group H NM-MC 2344 to 2351 M Nos. 51 to 58
- Group I NM-MC 2352 to 2359 M Nos. 91 to 96, 98

the sketches he submitted on several of the notices of location did not fulfill the requirements of 43 CFR 3833.1-2(c)(7). Appellant was given 30 days to cure this defect.

In his Statement of Reasons, Appellant argues that his claims do not overlap onto deeded or withdrawn land. He also expresses confusion as to the sketches referred to by the State Office and therefore asserts he cannot take remedial action.

[1] Mining claims may only be located on lands open to the operation of the United States mining laws. Land which has been patented without a reservation of minerals to the United States or which otherwise has been removed from the operation of the mining laws is not available for the location of mining claims. Mining claims located on such land after it is so removed are null and void ab initio. E.g., Floyd W. McCarty, 28 IBLA 246 (1976); J. P. Hinds, 25 IBLA 67, 70, 83 I.D. 275, 276 (1976); Montana Copper King Mining Co., 20 IBLA 30 (1975). Therefore, attempts to record such mining claims under 43 U.S.C.A. § 1744 (West Supp. 1977) are properly rejected.

The various quarter sections described above in which the bulk of the mining claims in groups A through F were located by Appellant appear open to location on the township plats in the case files. However, the claims in these groups are 1,500 feet in length according to the notices of location. The claims run either north-south or east-west. They are situated in pairs such that one claim will abut the section boundary and extend 1,500 feet into the quarter section open to mining. The second claim abuts the first and extends another 1,500 feet into the section. 2/ Since each quarter section is only 2,640 feet vertically and horizontally, the second claim extends 360 feet into the adjoining quarter section. Because some adjoining quarter sections are not open to the location of mining claims, the State Office properly rejected in part those claims which cross into such quarter sections.

[2] Appellant was required to record his mining claims in the manner set out at 43 CFR 3833.1-2. Failure to record the claims properly will result in a determination that the claims are abandoned and therefore void. 43 CFR 3833.4(a). The particular requirement with which the State Office informed Appellant he did not comply is set out at 43 CFR 3833.1-2(c)(7) as follows:

2/ In reaching this conclusion, we do not imply or decide that the descriptions in the claims are legally sufficient and complete.

A map with a scale of not less than 1/4 inch to a mile showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified.

The only maps apparently supplied by Appellant are small handdrawn sketches appearing on the bottom of the notice of location for the first mining claim in each of the nine groups (see footnote 1), i.e., in case files NM-MC 2313, 2321, 2329, 2331, 2335, 2339, 2343, 2344, and 2352. The dispute over where Appellant believes he located his claims might have been avoided if he had submitted more detailed maps for each group. His confusion concerning the existence of the sketches does not relieve him from the obligation of filing proper maps showing his mining claims. Such maps are properly required as a condition for accepting the recordation of the claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

